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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1156

MARIANNE O'BRIEN REYNOLDS,
Petitioner,

vs.

ESTATE OF RICHARD J. REYNOLDS,
Deceased, *et al.*,
Respondents.

BRIEF OF RESPONDENTS EXCEPT THE STATE OF GEORGIA IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

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BRIEF OF RESPONDENTS SAPELO ISLAND RESEARCH FOUNDATION, INC., ALFRED W. JONES, SR., LEDYARD S. STAPLES, LUHR G. C. BECKMANN, JR., ED R. GRAY, JR., JAMES WRIGHT, NANCY S. REYNOLDS, AND HERRICK K. LIDSTONE IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

OPINIONS BELOW

The opinion of the Supreme Court of Georgia [Appendix II] [1] is reported at 238 Ga. 1, 230 S.E.2d 842 (1976).

[1] References to the Appendix I-VII are to Petitioner's Appendix attached to the Petition for a Writ of Certiorari. Those to Appendix A are to the Appendix to this Brief.

JURISDICTION

The Judgment of the Supreme Court of Georgia was entered on November 3, 1976 and timely Motion for Rehearing was denied on November 23, 1976. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

Respondents contest this Court's jurisdiction on the following grounds:

(1) the Federal Constitutional questions sought to be raised in the Petition were neither raised nor decided at any stage of the proceedings in the Georgia courts as required by both state and federal law. [See page 5 of this Brief]; and,

(2) no substantial federal question is raised by the Petition.

QUESTIONS PRESENTED

(A) Has a substantial Federal question been properly presented to this Court?

(B) Did the decision of the Supreme Court of Georgia affirming the grant of summary judgment to Respondents:

(i) Deprive Petitioner of property without just compensation in violation of the 5th and 14th Amendments to the Constitution of the United States;

(ii) Deprive Petitioner of due process of law or deny her equal protection of the laws in violation of the 5th and 14th Amendments to the Constitution of the United States;

(iii) Violate the Full Faith and Credit Clause of Article IV of the Constitution of the United States?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

In quoting portions of the Uniform Stock Transfer Act, Ga. Laws 1939, pp. 384-92 [former *Ga. Code Ann.* § 22-1901 *et seq.*] Petitioner omits Sections 10 and 22 of that Act. Respondents consider these Sections to be relevant and they are set forth in Appendix A hereto.

STATEMENT OF THE CASE

Petitioner's statement of the case fails to give this Court a fair and impartial summary of the proceedings below. Accordingly, it is necessary that Respondents briefly set forth pertinent facts which are essential to a proper resolution of the issues sought to be presented for review.

Approximately thirty years after the fact and some eleven years after the death of R. J. Reynolds, Petitioner (the second of four wives of R. J. Reynolds) filed her complaint in the Superior Court of McIntosh County, Georgia, against these Respondents, other individuals, various dissolved corporations, and the State of Georgia seeking to establish her ownership of some 16,000 acres of real property located on Sapelo Island, Georgia, the record titleholders to which were the State of Georgia and Sapelo Island Research Foundation, Inc. and to enjoin a proposed sale of said property by the Foundation to the State for use as a estuarine sanctuary.

The sole basis upon which Petitioner claimed ownership of the Island was by virtue of a "prenuptial agreement" between Petitioner and R. J. Reynolds, allegedly handwritten by the latter on October 18, 1945 on a muti-

lated page of a calendar pad.[2] R. J. Reynolds was alleged to have agreed to deliver to Petitioner, by sunset October 20, 1945, all of the common stock in Sapelo Plantation, Inc., a Georgia corporation which was then the owner of the portions of Sapelo Island involved in the instant case, in exchange for $10.00 *and Petitioner's promise of marriage.* It is undisputed that R. J. Reynolds was then legally married to his first wife, Elizabeth Dillard Reynolds, and Petitioner had actual knowledge of this existing marriage. Petitioner has also admitted in sworn testimony that she never received the stock certificate.[3]

Approximately eight months later, on June 14, 1946, Reynolds and Elizabeth were divorced and, on August 7, 1946, Reynolds and Petitioner were married. That marriage was dissolved on August 7, 1952 by a final decree of divorce in Florida incorporating therein a full and final property settlement and release. Reynolds was remarried on two other occasions and died in 1964. During and after the marriage between Petitioner and Reynolds, a number of transfers of ownership and corporate dissolutions occurred resulting in title to the relevant portions of the Island being in the State and Foundation at the time of the suit.

Respondents filed defensive pleadings and after Petitioner's deposition was taken, motions for summary judgment were filed by these Respondents and the State of Georgia. These motions were granted on numerous

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[2] This agreement is quoted in its entirety on page 5 of the instant petition.

[3] The trial court held that testimony as to any conversations between Reynolds and Petitioner surrounding the supposed transfer of the certificate was inadmissible under the provisions of the Georgia Dead Man's Statute, *Ga. Code* § 38-1603(2)(3). [Appendix III, p. 10a.]

grounds, including among others: (1) the alleged agreement violated Georgia public policy and was unenforceable as a matter of law; (2) the action was barred by applicable statutes of limitation; (3) the action was barred by accord and satisfaction and release; and (4) statute of frauds. (Appendix III, IV & V). The grants of summary judgment were affirmed by the Georgia Supreme Court (Appendix II) and Petitioner's motion for rehearing was subsequently denied. (Appendix I).

The constitutional issues upon which the instant petition is predicated were admittedly not raised by the Petitioner at any stage of the state court proceedings, specifically including the motion for rehearing. (Petition, p. 7).

In affirming the decisions of the lower court, the Georgia Supreme Court relied upon well established principles of Georgia law and held that *any* contract which tends to promote the dissolution of a marriage violates public policy and is unenforceable as a matter of law. The prenuptial agreement relied upon by Petitioner was held to be such a contract and accordingly no rights accrued to Petitioner thereunder.

REASONS FOR DENYING THE WRIT

A. Petitioner's Failure to Timely Raise Federal Questions in the Georgia Courts Precludes Review by this Court.

Petitioner readily concedes her failure to raise the alleged federal questions at any stage of the state court proceedings and seeks to excuse this failure on patently insufficient grounds. (Petition, p. 7). The public policy principles discussed in the Georgia Supreme Court's opinion were neither new nor novel. *Jones v. Sovereign*

Camp, Woodmen of the World, 35 F.2d 345 (5th Cir. 1929); *Reynolds v. Reynolds*, 217 Ga. 234, 255, 123 S.E.2d 115 (1961); *Morgan v. Wright*, 219 Ga. 385, 387, 133 S.E.2d 341 (1963). They were initially raised in defensive pleadings filed in response to the Complaint; again raised in the motions for summary judgment; and specifically relied upon in the trial court's decision granting summary judgment to Respondents (Appendix III, p. 11a; V, p. 19a). Additionally, they were briefed and argued by all parties in the Georgia Supreme Court and, even after the decision, Petitioner made no effort to raise a federal question in her motion for rehearing.

Under well established principles of Georgia law, a Constitutional question not raised in the trial court cannot be raised for the first time on appeal. *Thompson v. Allen*, 195 Ga. 733, 25 S.E.2d 423 (1943); *Haber v. Fulton County*, 124 Ga. App. 789, 186 S.E.2d 152 (1971). This Court has recognized and approved this rule as a valid exercise of State power for the purpose of determining its own jurisdiction to review State Court decisions. *Williams v. Georgia*, 349 U.S. 375, 382-3 (1955); *Stembridge v. Georgia*, 343 U.S. 541 (1952); *Herndon v. Georgia*, 295 U.S. 441 (1935). Even if the Georgia rule were to the contrary, the fact that Petitioner failed to raise the federal questions in her appeal to the State Supreme Court and in her subsequent motion for rehearing precludes appellate review by this Court. 28 U.S.C. § 1257(3); *Compare: Cardinale v. Louisiana*, 394 U.S. 437 (1969); *Ferguson v. Georgia*, 365 U.S. 570 (1961); *Stembridge v. Georgia, supra*, with *Chambers v. Mississippi*, 410 U.S. 284 (1973).

B. The Petition Raises no Substantial Federal Question and Those Sought to be Raised are Without Merit.

(1) Petitioner's contention that there has been a taking of her property without due process of law and in derogation of her right to equal protection of the laws raises no substantial federal question.

Stated in its simplest terms, the principal issue in this case involved the question of the ownership of some 16,000 acres of real property constituting a portion of Sapelo Island. Petitioner's arguments presuppose an ownership interest in the real property arising by reason of the 1945 prenuptial agreement. Absent such an ownership interest, Petitioner had no property right in the land to be acquired by the State of Georgia and consequently no such right could be taken from her.

The ownership issue was decided under state law adversely to the Petitioner by the Georgia courts at both the trial and appellate levels. Both courts held that the instrument upon which Petitioner's claim of ownership was premised was unenforceable as a matter of law because the same violated the public policy of the State of Georgia prohibiting enforcement of *any* contract which tends to promote the dissolution of a marriage. (Appendix II, III, & V).

Under these circumstances, the most that Petitioner can say is that the state courts have erroneously construed or applied the statutory and decisional law of the State of Georgia relating to a matter of state public policy. That issue is a pure question of local law *which is of no concern to this Court* and is clearly insufficient to raise a substantial federal question. *Kryger v. Wilson*,

242 U.S. 171 (1916). In addition, where the parties have been fully heard in the regular course of judicial proceedings, a decision of a state court on a matter of state law, even if erroneous, does not deprive the unsuccessful party of his Fourteenth Amendment rights. *Central Land Company of West Virginia v. Laidley*, 159 U.S. 103 (1895); *Neblett v. Carpenter*, 305 U.S. 297, 302 (1939); *A. M. Klemm & Son v. City of Winter Haven*, 309 U.S. 638 (1940) (per curiam).

Finally, it is well settled that state law, rather than federal common law, governs issues relating to the ownership of real property unless some other principle of federal law requires a different result. *Oregon v. Corvallis Sand and Gravel*, ___ U.S. ___, 50 L.Ed.2d 550 (1977); *Munday v. Wisconsin Trust Co.*, 252 U.S. 499 (1920).

No other principle of federal law requiring a different result is urged by Petitioner and accordingly, the claimed violations of her Constitutional rights are not only insufficient to raise substantial federal questions but clearly without merit as well.

(2) Petitioner's contention that the holding of the Georgia Court that a transfer of stock could be effectuated only on the corporate books was so arbitrary as to deprive her of property without due process of law likewise raises no substantial Federal question.

As previously discussed, a claimed erroneous interpretation of a state statute (here, the Uniform Stock Transfer Act) creates no basis for review by this Court. Furthermore, this statute was repealed some fifteen (15) years ago (Ga. Laws 1962, pp. 156, 427; *Ga. Code Ann.* § 109A-10-103) and any decision by this Court on this issue would have absolutely no effect upon the present or future

securities market. Finally, while conceding the necessity of delivery of the endorsed certificate, defined in § 22 of the Uniform Stock Transfer Act (Appendix A), as a "voluntary transfer of possession," Petitioner admits that she never received the stock certificate and waited for more than thirty (30) years to bring suit.

Under these circumstances, there is no substantial Federal question and no merit to the question sought to be raised.

(3) Petitioner further contends that the basis for the decision of the Georgia Court that the contract was unenforceable was the fact that one of the parties was married. She asserts that creation by the Court of an irrebuttable presumption that the contract tended to dissolve the existing marriage somehow deprives her of equal protection of the laws. Such contention not only misstates the basis of the Court's holding but also fails to raise a substantial federal question.

Any objective reading of the decision of the Georgia Court reveals that its basic holding was that *any* contract tending to promote the dissolution of a marriage is unenforceable as against public policy. The existing marital status of the parties is totally irrelevant and it matters not whether one, both or neither of the parties to such a contract are married. *Guffin v. Kelley*, 191 Ga. 880, 14 S.E.2d 50 (1941) (married man—unmarried woman), dissenting opinion adopted in *Morgan v. Wright, supra* (married woman—unmarried man); *Birch v. Anthony*, 109 Ga. 349, 34 S.E. 561 (1899) (both married); *Reynolds v. Reynolds, supra* (neither married); *Jones v. Sovereign Camp, Woodmen of the World, supra* (married man contemplating divorce—unmarried woman).

It is thus apparent that it is the effect of such a contract on marriage and not the marital status of the parties thereto which is relevant and controlling.

In this case, the Georgia Court did nothing more than follow and apply these well established and long-standing principles of Georgia law and the equitable doctrine of clean hands in holding that a contract by a married man, where a part of the consideration was a promise of marriage by another, fell within the general prohibition against contracts tending to promote the dissolution of a marriage. To contend that these principles of law and equity were new, unexpected or suddenly announced is to ignore the decisions cited above, as well as the unwaivering policy of the State of Georgia favoring the preservation of marriage.

As thus viewed, the decision of the Georgia Court does not create any unlawful distinction between the married and unmarried but, on the contrary, is perfectly consistent with federal law denying the equity powers of the court to those seeking to enforce private contracts violating public policy. *Shelly v. Kraemer*, 334 U.S. 1 (1948).

Finally, this Court has recognized for more than one hundred years that, in domestic relations matters, the states have an especially strong interest and the federal interest is minimal, *Ex Parte Burrus*, 136 U.S. 586, 594 (1890); *Barber v. Barber*, 21 How. 582, 584 (1858) though, of course, the states may not unlawfully discriminate in their laws relating thereto. *Loving v. Virginia*, 388 U.S. 1 (1967). The subject of enforceability of contracts where a portion of the consideration is a promise to marry is accordingly not a matter of Federal concern absent factors not present in the instant case.

Consequently, Petitioner has again failed to raise a substantial federal question and that sought to be raised is plainly without merit.

(4) Petitioner's final contention that the failure of the Georgia courts to apply New York law contravenes the Full Faith and Credit Clause of Article IV of the Constitution is without merit for several reasons.

First, Georgia law requires that a party who intends to raise an issue concerning the law of another state shall give notice of his intent to do so in his pleading or other reasonable written notice and offer proof thereof in the trial court. *Ga. Code Ann.* § 81A-143(c) (Ga. Laws 1968, pp. 1104, 1108). Absent compliance with these requirements, neither the trial nor appellate courts can take judicial cognizance of the law of the sister state. *Lauer v. Bodner*, 137 Ga. App. 851, 225 S.E.2d 69 (1976). Petitioner made no attempt to comply with these requirements in the trial court and her failure to do so precludes consideration by both the Georgia Supreme Court and this Court.

Second, the substantive law of New York is no different from that of Georgia and the application of New York law would not change the result. *Lowe v. Quinn*, 32 App. Div.2d 269, 301 N.Y.S.2d 361 (1st Dept. 1969); aff'd. 27 N.Y.2d 337, 318 N.Y.S.2d 467, 267 N.E.2d 251 (1970); *Shoenfeld v. Fontek*, 67 Misc.2d 481, 324 N.Y.S.2d 487 (1971). Petitioner's reliance on *In Re Estate of Fleischmann*, 64 Misc.2d 924, 316 N.Y.S.2d 272 (1970), is misplaced as the Court there expressly found no express promise of marriage.

Third, the doctrines of Conflict of Laws are governed solely by state law and are not a matter of federal concern.

Kryger v. Wilson, supra.

Finally, the inconsistent positions taken by Petitioner regarding the applicable law must be noted. She relies on the Georgia Uniform Stock Transfer Act to support her contention concerning the transfer of the stock, but prefers New York law on the public policy issue. Petitioner cannot have it both ways and, in any event, no substantial federal question is presented.

C. The Decision of the Georgia Court Turns on Its Peculiar Facts and Will Affect Few Others Than the Litigants

Petitioner contends (Petition, pp. 16, 21) that the decision of the Georgia Court turned on the fact that one of the parties was married and complains that the Court ignored the fact that the evidence "shows conclusively" that Reynolds' existing marriage was irrevocably broken. While these Respondents disagree with both contentions, if they are assumed to be correct for purposes of argument, any decision by this Court would be so limited in scope as to have little meaning in a national context.

As the issue is thus framed by Petitioner, any rule enunciated in this case would apply only to contracts between a married and an unmarried person, predicated on consideration of a promise to marry, where the existing marriage was, in fact, irrevocably broken. Respondents respectfully submit that such peculiar circumstances are rare and that no principle of important national import would result from a grant of the Writ in this case.

D. Reversal of the Georgia Court will Neither Resolve the Case Nor Change the Result

The decision of the trial court granting summary judgment was not predicated solely upon a determination that the contract violated Georgia public policy. Rather, the decision also turned on the application of state statutes of limitation; the equitable doctrines of laches; the effect of certain releases signed by Petitioner at the time of her divorce from Reynolds and thereafter; and a number of other grounds applicable only to particular Counts of the Complaint (Appendix III, V). While the Georgia Supreme Court found it unnecessary to reach these grounds (excepting the application of the Statute of Frauds to Count VII (Appendix II, p. 8a.)), any one of these additional grounds would have been sufficient to dispose of the case with the same result. Consequently, the impact of a decision by this Court in this case would be minimal at best and, as discussed elsewhere in this Brief, would not establish any important basic federal principle of general application.

CONCLUSION

For the reasons herein stated and on the authorities cited, Respondents respectfully submit that there is no valid ground for invoking the jurisdiction of this Court and accordingly, urge that the Petition be denied.

Respectfully submitted,

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APPENDIX A

Uniform Stock Transfer Act, Ga. Laws 1939, pp. 384-392. Repealed Ga. Laws 1962, pp. 156, *et seq.* (*Ga. Code Ann.* §§ 109A-8-101, 10-103).

Section 10. An attempted transfer of title to a certificate or to the shares represented thereby without delivery of the certificate shall have the effect of a promise to transfer and the obligation, if any, imposed by such promise shall be determined by the law governing the formation and performance of contracts.

Section 22. 1. In this Act, unless the context or subject-matter otherwise requires—"Certificate" means a certificate of stock in a corporation organized under the laws of this State or of another State whose laws are consistent with this Act. "Delivery" means voluntary transfer of possession from one person to another. "Person" includes a corporation or partnership or two or more persons. To "Purchase" includes to take as mortgagee or as pledgee. "Purchaser" includes mortgagee and pledgee. "Shares" means a share or shares of stock in a corporation organized under the laws of this State or of another State whose laws are consistent with this Act. "State" includes State, territory, district and insular possessions of the United States. "Transfer" means transfer of legal title. "Title" means legal title and does not include a merely equitable or beneficial ownership or interest. "Value" is any consideration sufficient to support a simple contract. An antecedent or preexisting obligation, whether for money or not, constitutes value where a certificate is taken either in satisfaction thereof or as security therefor.